

ASSEMBLY BILL

No. 534

Introduced by Assembly Member Vargas

February 18, 2003

An act to amend Sections 22442, 22442.2, and 22443 of, and to add Sections 22441.5 and 22442.1 to, the Business and Professions Code, relating to immigration consultants.

LEGISLATIVE COUNSEL'S DIGEST

AB 534, as introduced, Vargas. Immigration consultants: client protection.

Existing law regulates the practice of immigration consultants, defined as persons who provide nonlegal assistance or advice in an immigration matter. Existing law makes a violation of the provisions governing immigration consultants a crime.

Existing law requires an immigration consultant to meet certain requirements, including requiring a consultant to conspicuously display a notice stating, among other things, that he or she is not an attorney, requiring a consultant to provide a client with a written contract containing provisions including the services to be provided and the amount charged, and prohibiting a consultant from retaining original documents of a client.

This bill would prohibit a person engaging in the business of, or acting in the capacity of, an immigration consultant from accepting any payment or providing any services until he or she has registered with the Department of Consumer Services as an immigration consultant and obtained a general business license. The bill would require the consultant to provide to the client a written translation of the contract into the client's native language, and would require the contract to state

that if this is not done, the contract is void. The bill would require a consultant to provide a signed receipt for all payments made by the client.

This bill would require the notice posted in the consultant's office to include the services that the immigration consultant provides and would require the consultant, if he or she has prepared legal forms or documents on behalf of the client and the client is not fluent in English, to provide a competent translator and to provide a translated copy of the documents signed. The bill would also require a consultant to return to a client all original documents that the client has provided in support of his or her application.

Because this bill would create new requirements for an immigration consultant, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22441.5 is added to the Business and
- 2 Professions Code, to read:
- 3 22441.5. A person engaging in the business of or acting in the
- 4 capacity of an immigration consultant shall not accept any
- 5 payment or provide any services as an immigration consultant
- 6 until he or she has done each of the following:
- 7 (a) Registered with the Department of Consumer Services as an
- 8 immigration consultant.
- 9 (b) Obtained a general business license.
- 10 SEC. 2. Section 22442 of the Business and Professions Code
- 11 is amended to read:
- 12 22442. (a) Every person engaged in the business or acting in
- 13 the capacity of an immigration consultant who enters into a
- 14 contract or agreement with a client to provide services shall, prior
- 15 to providing any services, provide the client with a written



1 contract, the contents of which shall be prescribed by the
2 Department of Consumer Affairs in regulations adopted by it.

3 (b) The written contract shall include *all* provisions relating to
4 the following:

5 (1) The services to be performed.

6 (2) The costs of the services to be performed.

7 There shall be printed on the face of the contract in 10-point bold
8 type a statement that the immigration consultant is not an attorney
9 and may not perform the legal services that an attorney performs.

10 (3) *The contract shall state that if a written translation of the*
11 *contract into the client's native language is not provided to the*
12 *client, the contract is void.*

13 (c) The written contract shall not include provisions relating to
14 the following:

15 (1) Any guarantee or promise, unless the immigration
16 consultant has some basis in fact for making the guarantee or
17 promise.

18 (2) Any statement that the immigration consultant can or will
19 obtain special favors from or has special influence with the United
20 States Immigration and Naturalization Service.

21 (d) The provisions of the written contract shall be stated both
22 in English and in the language of the client.

23 (e) The client shall have the right to rescind the contract within
24 72 hours of signing the contract. The contents of this subdivision
25 shall be conspicuously set forth in the written contract in both
26 English and the language of the client.

27 (f) *The consultant shall provide the client a written translation*
28 *of the contract in the client's native language.*

29 (g) A violation of this section is a misdemeanor.

30 ~~(g)~~

31 (h) This section does not apply to employees of nonprofit,
32 tax-exempt corporations who help clients, free of charge or for a
33 fee, including reasonable costs, consistent with that authorized by
34 the United States Immigration and Naturalization Service for
35 qualified designated entities, complete application forms in an
36 immigration matter.

37 SEC. 3. Section 22442.1 is added to the Business and
38 Professions Code, to read:

39 22442.1. A person engaged in the business or acting in the
40 capacity of an immigration consultant shall do all of the following:

1 (a) Provide a signed receipt to a client for all payments made
2 by that client.

3 (b) If the consultant has prepared legal forms or documents on
4 behalf of a client not fluent in the English language, the consultant
5 shall provide a competent translator to translate the information
6 contained in the legal forms or documents, and shall provide the
7 client with a translated copy of the documents signed.

8 SEC. 4. Section 22442.2 of the Business and Professions
9 Code is amended to read:

10 22442.2. (a) An immigration consultant shall conspicuously
11 display in his or her office a notice that shall be at least 12 inches
12 by 20 inches with boldface type or print with each character at least
13 one inch in height and width in English and in the native language
14 of the consultant's clientele, the following information:

15 (1) The full name, address, and evidence of compliance with
16 any applicable bonding requirement including the bond number,
17 if any.

18 (2) A statement that the consultant is not an attorney.

19 (3) *The services that the immigration consultant provides.*

20 (b) Prior to providing any services, an immigration consultant
21 shall provide the client with a written disclosure that shall include
22 the immigration consultant's name, address, telephone number,
23 agent for service of process, and evidence of compliance with any
24 applicable bonding requirement, including the bond number, if
25 any.

26 (c) (1) Except as provided in paragraph (2) or (3), an
27 immigration consultant who prints, displays, publishes,
28 distributes, or broadcasts, or who causes to be printed, displayed,
29 published, distributed, or broadcasted, any advertisement for
30 services as an immigration consultant, within the meaning of
31 Section 22441, shall include in that advertisement a clear and
32 conspicuous statement that the immigration consultant is not an
33 attorney.

34 (2) Notwithstanding paragraph (1), a person engaging in the
35 business or acting in the capacity of an immigration consultant
36 who is not licensed as an attorney in any state or territory of the
37 United States, but is authorized by federal law to represent persons
38 before the Board of Immigration Appeals or the United States
39 Immigration and Naturalization Service, shall include in any
40 advertisement for services as an immigration consultant a clear



1 and conspicuous statement that the consultant is not an attorney but
2 is authorized by federal law to represent persons before the Board
3 of Immigration Appeals or the United States Immigration and
4 Naturalization Service.

5 (3) Notwithstanding paragraph (1), a person engaging in the
6 business or acting in the capacity of an immigration consultant
7 who is not an active member of the State Bar of California, but is
8 an attorney licensed in another state or territory of the United
9 States and is admitted to practice before the Board of Immigration
10 Appeals or the United States Immigration and Naturalization
11 Service, shall include in any advertisement for services as an
12 immigration consultant a clear and conspicuous statement that the
13 consultant is not an attorney licensed to practice law in California
14 but is an attorney licensed in another state or territory of the United
15 States and is authorized by federal law to represent persons before
16 the Board of Immigration Appeals or the United States
17 Immigration and Naturalization Service.

18 (4) If an advertisement subject to this subdivision is in a
19 language other than English, the statement required by this
20 subdivision shall be in the same language as the advertisement.

21 SEC. 5. Section 22443 of the Business and Professions Code
22 is amended to read:

23 22443. (a) A person engaged in the business or acting in the
24 capacity of an immigration consultant shall deliver to a client a
25 copy of each document or form completed on behalf of the client.
26 Each document and form delivered must include the name and
27 address of the immigration consultant.

28 (b) A person engaged in the business or acting in the capacity
29 of an immigration consultant shall retain copies of all documents
30 and forms of a client for not less than three years from the date of
31 the last service to the client.

32 (c) ~~No~~ A person engaged in the business or acting in the
33 capacity of an immigration consultant shall ~~retain in his or her~~
34 ~~possession original documents of a client~~ *return to a client all*
35 *original documents that the client has provided to the consultant*
36 *in support of the client's application.*

37 SEC. 6. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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